

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JON TYLER	:	CIVIL ACTION
	:	
v.	:	
	:	
RENTAL SERVICE CORPORATION	:	NO. 01-4644

MEMORANDUM ORDER

Plaintiff has asserted a claim for negligence arising from injuries he sustained while working at a construction site in Ahoskie, North Carolina when a Lull Highlander lifting machine tipped over. Plaintiff alleges that prior to leasing the machine to plaintiff's employer, an agent or employee of defendant disconnected, disabled or disengaged the safety switch on the telescopic boom which allowed the operator to drive the machine with the boom in an extended position.

Plaintiff is a citizen of Pennsylvania who resides in Coalport, located in Clearfield County, Pennsylvania. At the time of the accident, plaintiff was employed by MBR Construction, Inc., a Pennsylvania corporation located in Boalsburg, Centre County, Pennsylvania. Defendant is incorporated under the laws of Arizona and has its principal place of business in Scottsdale, Arizona. Plaintiff seeks damages in excess of \$75,000.00.

Presently before the court is defendant's motion to transfer venue to the Middle District of Pennsylvania pursuant to 28 U.S.C. 1404(a).¹

Pursuant to § 1404(a), a district court may transfer a civil action to another district in which it might have been brought if the transfer is for the convenience of the parties and witnesses or in the interests of justice. See Coffey v. Van Dorn Iron Works, 796 F.2d 217, 219-20 (7th Cir. 1986); Shutte v. Armco Steel Corp., 431 F.2d 22, 24 (3d Cir. 1970), cert. denied, 401 U.S. 910 (1971); Supco Automotive Parts, Inc. v. Triangle Auto Spring Co., 538 F. Supp. 1187, 1191 (E.D. Pa. 1982). The Middle District of Pennsylvania is a district in which this action might have been brought. Defendant maintains two offices in that district at Newport and Thomasville from which it conducts business. Venue in that district would thus be proper. See 28 U.S.C. § 1391(c).

¹ Although, presumably by inadvertence, defendant titled its motion as one to dismiss, it is clearly a motion for transfer of venue. In the first paragraph, defendant states "RSC seeks to transfer this action to the United States District Court for the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1404" and attached a proposed order which would effectuate such a transfer. It is clear from plaintiff's response that he understood and addressed the motion as one for transfer pursuant to § 1404(a). In his proposed order, plaintiff also refers to the motion as "Defendant Rental Service Corporation's Motion to Transfer Venue." The court thus treats the motion as one for transfer of venue.

The relevant private and public interest considerations in deciding a § 1404(a) motion include the plaintiff's choice of venue; the defendant's preference; where the claim arose; the relative condition of the parties; the extent to which witnesses may be unavailable for trial in one of the fora; the extent to which records or other documentary evidence could not be produced in one of the fora; the enforceability of any judgment; practical considerations that could make the trial easy, expeditious or inexpensive; the relative administrative difficulty in the two fora resulting from court congestion; the local interest in deciding the controversy; the public policies of the fora; and, the familiarity of the trial judge with the applicable state law in diversity cases. See Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995).² The moving party bears the burden of showing that a balancing of the pertinent factors weighs in favor of transfer. See Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 29 (1988); Jumara, 55 F.3d at 879.

A plaintiff's choice of forum is generally entitled to great weight. Id. A plaintiff's choice is not conclusive, however, or the courts would not employ a multi-factor test, a defendant could never obtain a change of venue and § 1404(a)

² Convenience of counsel is not a relevant consideration. See Solomon v. Continental American Life Ins., 472 F.2d 1043, 1047 (3d Cir. 1973); Burstein v. Applied Extrusion Techs., Inc., 829 F. Supp. 106, 112 (D. Del. 1992).

would be rendered meaningless. Moreover, the deference given to a plaintiff's choice of forum is reduced when he does not reside and none of the key events underlying the claim occurred in the forum selected. See Lindley v. Caterpillar, Inc., 93 F. Supp. 2d 615, 617 (E.D. Pa. 2000); Matt v. Baxter Healthcare Corp., 74 F. Supp. 2d 467, 469-70 (E.D. Pa. 1999); Tranor v. Brown, 913 F. Supp. 388, 391 (E.D. Pa. 1996); Burstein, 829 F. Supp. at 110; Cain v. DeDonatis, 683 F. Supp. 510, 512 (E.D. Pa. 1988); Vivident (U.S.A.), Inc. v. Darby Dental Supply Co., 655 F. Supp. 1359, 1360 (D.N.J. 1987); Schmidt v. Leader Dogs for the Blind, Inc., 544 F. Supp. 42, 47 (E.D. Pa. 1982).

The Eastern District of Pennsylvania is neither plaintiff's home district nor the locus of any operative facts underlying this action. No witness resides in this district and no pertinent records are located here. There is no connection between this litigation and this forum. The only connection of any party to this district is the maintenance by defendant of an office in Lancaster. Defendant also maintains two offices in the Middle District of Pennsylvania, as noted.

Plaintiff obviously has chosen this forum. Defendant's preference is the Middle District of Pennsylvania. It appears from the complaint that the essential acts and omissions giving rise to the claim occurred in North Carolina.

There are no public policy considerations or issues regarding court congestion or the enforcement of any judgment. Judges in the Eastern and Middle District would be equally familiar with Pennsylvania law and equally unfamiliar with North Carolina law. Moreover, the basic principles of negligence law do not vary substantially among the states. There has been no showing that any witness or document could be produced in one district but not the other. It does appear that it would be easier and less expensive for some participants if the trial were held in the Middle District.

Plaintiff received many months of treatment from physicians and therapists in Altoona. It would be more convenient and less expensive for them to testify in Harrisburg which is more than 100 miles closer than Philadelphia. There are four eyewitnesses to the accident. One lives in Coalport, as does plaintiff, which is more than 100 miles closer to Harrisburg, as is Flinton where a second eyewitness resides. Two eyewitnesses reside in Brockwell, Arkansas. For them, a trip to Harrisburg or Philadelphia would be equally inconvenient and costly. Three witnesses have been identified who reside in Boalsburg and three who reside in Pittsburgh, both of which are much closer to Harrisburg than Philadelphia. While identifying none, plaintiff states that witnesses from defendant's local office in North Carolina would testify. For any such witness, a

trip to Harrisburg or Philadelphia would be roughly equidistant. Defendant's Aulander, North Carolina office is 23 miles closer to Harrisburg than Philadelphia.³

This district has no relationship to or local interest in deciding this controversy. Indeed, jurors here would likely wonder why they had been required to resolve a dispute between a foreign corporation and a Clearfield County resident, employed from Centre County, arising from an accident in North Carolina.

There is a relationship between the controversy and the Eastern District of North Carolina where the alleged wrongful conduct and injury occurred. There would also be a local interest in the Western District of Pennsylvania in providing a forum for an injured resident. This interest would likely be shared by members of the community in the Middle District of Pennsylvania which is barely ten miles from plaintiff's home in Coalport. The Middle District is also the home of plaintiff's employer which leased the machine at issue, provided workman's

³ Plaintiff suggests that because it has a major airport, Philadelphia would be easier for witnesses to reach. In fact, witnesses from Clearfield and Centre County would have to go to Harrisburg or Williamsport to fly to Philadelphia. Witnesses from Pittsburgh and Altoona, if they so choose, can fly to Harrisburg. There are no direct flights from Little Rock to Philadelphia and two direct flights each day from Little Rock to Pittsburgh through which those from Arkansas would have to pass to fly to Philadelphia or Harrisburg. The unidentified witnesses from defendant's local North Carolina office would have to travel more than eighty miles to Norfolk, site of the closest major airport, to fly commercially anywhere.

compensation for him and assigned him to the job in question. As the home of the defendant which engaged in the alleged wrongful conduct, the District of Arizona would also have some interest. It is true that defendant has an office in this district. It also has two offices, however, in the Middle District and it appears to have been in that district where MBR engaged defendant.

The court gives significant but not overwhelming weight to plaintiff's choice of forum in these circumstances. Far more significant, however, is the absence of any connection between this litigation and this district. This case should be tried in a district with some affinity for those involved and some logical interest. This can be done in the Middle District while conveniencing some and inconveniencing none.

ACCORDINGLY, this day of January, 2002, upon consideration of defendant's motion to transfer venue (Doc. #7) and plaintiff's response thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and, pursuant to 28 U.S.C. § 1404(a), the above action is **TRANSFERRED** to the U.S. District Court for the Middle District of Pennsylvania at Harrisburg.

BY THE COURT:

JAY C. WALDMAN, J.